

A CRITICAL EXAMINATION OF THE MERITS  
AND DEMERITS OF THE WORKPLACE  
SMOKING RESTRICTION DEBATE

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ABSTRACT

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A Critical Examination of the Merits and Demerits of the Workplace  
Smoking Restriction Debate

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The primary intent of this degree paper is to critically examine the arguments advanced by both proponents and opponents of the workplace smoking restriction debate.

This study is significant because of the fact that medical costs in this country are becoming prohibitive and lately, Americans have become very conscious about their health. Consequently, the health issues relevant to secondhand smoke is dear to the hearts of many Americans. The study revealed that there are three main issues that dominate the workplace smoking debate. These are: (a) health implications, (b) business costs, and (c) employee productivity.

The main sources of information for this study were obtained from interviews with Ms. Sharon Ransome, Project Coordinator for the Tobacco Institute, Ms. Doris Green, Project Coordinator for the American Lung Association of Atlanta, and Mr. Stanley Scott, Vice President of Public Affairs for Phillip Morris Corporation. In addition, a variety of secondary information was obtained from government documents, books, journals, reports, and studies.

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## I. INTRODUCTION

Smoking is fast becoming one of the hottest workplace issues of the mid-1980s and the debate on smoking in the workplace is escalating. The struggle between smokers and non-smokers for their individual rights and for control of the air has reached a level of concern and even militancy that virtually no employer will be able to ignore. In some areas where employers have refused to deal with the problem, avid anti-smoking groups have made workplace smoking a public issue and lobbied all voters, not just those who are employed, to cast a ballot against uncontrolled smoking at worksites, as well as at more traditional public places, such as restaurants and transportation facilities.

Why has this problem of if, where, and when smoking shall be allowed at a worksite --a problem that has been with us as long as there have been smokers--been raised to this level of public debate in the last few years? Why are advocates on both sides of the issue not only squaring off within businesses, but also spending many thousands of dollars to influence votes on public referenda? While on one hand, the answer is very complex, on the other hand, the evidence supporting those who advocate restrictions is straightforward and overwhelming.<sup>1</sup>

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<sup>1</sup>Ruth A. Behrens and Willis B. Goldbeck, "Smoking at the Workplace? An Escapable Decision," Special Report (Washington, D.C.: Bureau of National Affairs, 1986), p. 89.



The Tobacco Institute has for many years regarded as one of its most important functions the dissemination of information concerning the tobacco industry to members of the public. This function has assumed additional prominence of late, given the increased level of public debate over the relative rights of smokers and non-smokers and the health implications of environmental secondhand smoke.

Various special interest groups opposed to smoking have within the past few years launched a concerted and well-orchestrated drive to restrict or prohibit altogether smoking by employees at their places of work. As part of that effort, these organizations have distributed tracts to both workers and their employers. These publications generally discuss the current case law in a way that suggests that any employer who refuses to accede to even the most militant demands for a smoke-free environment does so only at the very real risk of being on the losing end of a lawsuit.<sup>2</sup>

Smoking in the workplace is not, of course, anything new. What is new, is the effort that has been made by few groups and individuals during the past few years to use the courts to compel compliance with their anti-smoking views.

Smoking in the workplace is under attack. Employers of virtually every size and description are taking steps to curtail smoking on the job for employee health and/or comfort reasons. While the majority of employers in the United States has not yet restricted employee smoking, the growth of workplace smoking policies in the last few years is

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<sup>2</sup>Phillip Sullivan, "The Smoking Controversy," America, February 16, 1985, p. 128.

unmistakable. The smoking issue is a highly controversial one. In the current debate, experts differ on such fundamental questions as to whether tobacco smoke in the air is a significant health hazard to non-smoking employees, and whether smoking controls cause employers to save or lose money. Interest groups such as The Tobacco Institute and the American Lung Association provide the public with fact sheets that are contradictory and obviously cloud the issue.<sup>3</sup> Both smoking and non-smoking employees are becoming emotionally involved in the debate.

The main purpose of this paper therefore is to critically examine the arguments advanced by both proponents and opponents of the workplace restriction debate.

## II. THE PROBLEM AND ITS SETTING

Smoking in the workplace has been a non-issue for decades. Smoking and non-smoking employees worked side by side, without evident hostility, health fears, or arguments. Where fire hazards or sanitation were not obvious concerns, smoking restrictions were almost unknown. The popular image of workers was often interwoven with smoking: Executives smoked cigars, professors smoked pipes, and hard workers everywhere smoked cigarettes. These images die hard, but, the fact is that smoking in the workplace is no longer a non-issue. Rather than the glamorous image of smoking in the past as a mark of success, smoking is today occasionally viewed simply as a bad habit.

Following the U.S. Surgeon General's landmark 1964 report on the health hazards of smoking, smoking slowly became a subject of controversy in society at large.<sup>4</sup> Now, smoking in the American workplace is becoming unacceptable, subject to increasing criticism, and to increasing limitation.

The nation's largest employer, the United States Government has proposed tough smoking restrictions. On May 22, 1986, the General Services Administration (GSA) issued a proposed regulation on smoking which would apply to all GSA-controlled buildings and facilities, some

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<sup>4</sup>Bureau of National Affairs, Where There's Smoke: Problems and Policies Concerning Smoking in the Workplace (Washington, D.C.: Bureau of National Affairs, Inc., 1986), p. 3.

7,000 buildings nationwide in which 887,000 federal employees work.<sup>5</sup> The regulation would ban smoking in shared work areas, auditoriums, conference rooms, classrooms, restrooms, corridors, lobbies--virtually all work spaces except private offices. Under the proposed regulations, agency chiefs could ban smoking in private offices as well. Smoking would be allowed only in designated smoking areas.<sup>6</sup> The proposed regulation mentions cafeterias and vending areas as locations in which local building managers could designate smoking zones.

What is behind the surge in smoking restrictions? The answer depends very much on who is being questioned. According to the advocates of smoking control, mounting concern over the effects of smoking on the health, productivity, and morale of both smokers and non-smokers combined with changing social attitudes about smoking, reversed the notion that smoking is an acceptable public practice.<sup>7</sup>

Critics of smoking controls contend that smoking remains a non-issue for most employees and employers, and blame the rising tide of smoking restrictions on a small but determined group of anti-smokers who often turn to legislation to force employers to adopt policies that restrict smoking.

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<sup>5</sup> Ibid., p. 3.

<sup>6</sup> Ibid., pp. 3-4.

<sup>7</sup> Ibid., p. 5.

### III. STATEMENT OF THE PROBLEM

Proponents of local, state and federal legislation to restrict smoking in public places and in the private workplace frequently claim that other people's tobacco smoke can jeopardize the health of non-smokers. In addition, these proponents also cite reports that purport to show that smokers are less productive, absent more frequently and incur higher insurance costs than nonsmokers.<sup>8</sup>

The Action on Smoking and Health (ASH), a national charitable anti-smoking organization which first kicked off the non-smoker's rights movement by requesting no-smoking sections on airplanes, believes that smoking should be, and is being, restricted in the workplace for a variety of reasons.<sup>9</sup> It has long been established that a very large number of people have a variety of conditions such as asthma, hay fever, sinusities, allergies, etc., and that they suffer immediate and serious health problems when exposed to tobacco smoke in concentration often found in the workplace. Potentially far more serious is a growing body of evidence, including articles in more than a dozen major medical journals indicating that ambient tobacco smoke can and does cause lung cancer in nonsmokers.<sup>10</sup>

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<sup>8</sup>John F. Banzhaf, "Yes, Restrict Smoking in the Workplace: A Bureau of National Affairs Special Report" (Washington, D.C.: Bureau of National Affairs, 1986), p. 87.

<sup>9</sup>Ibid.

<sup>10</sup>Ibid.

However, as for health, productivity, and morale concerns, smokers' rights advocates, often supported by the tobacco industry, insist that the data are inconclusive at best, except for the long-term health risks of smoking to smokers themselves. Accepting those risks, they say, is a matter of personal choice.

While both proponents and opponents of workplace smoking restriction argue about the scientific evidence in support of their respective positions, the debate continues unabated. The debate mainly centers around (a) health implications, (b) business costs, and (c) employee productivity. The contending viewpoints regarding these issues are examined in the analysis section of this study.

#### IV. EVOLUTION OF THE SMOKING LEGISLATION

This section of the paper deals with the evolution of legal developments, along with the legislative developments of workplace smoking at the state and local levels, as well as union reactions and initiatives.

##### Legal Developments

The workplace smoking debate raises a series of legal questions. Some of the questions are: Can employers unilaterally ban smoking, hire only non-smokers, and force smokers either to quit smoking or be fired? Can an employer fire an employee who refuses to work in the presence of smokers? Is having a physical reaction to secondhand smoke a handicap protected by antidiscrimination laws? Is the "addiction" to smoking a handicap protected by antidiscrimination laws? Just what are the legal rights of smokers and non-smokers in the workplace?<sup>11</sup>

These are but a few of the legal questions in the workplace smoking debate. Legal claims related to workplace smoking fall into several categories. They include:

\*Constitutional claims, such as a claim to the right to a smoke-free work environment;

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<sup>11</sup>Lawrence R. Ashe and Dennis H. Vaughn, "Smoking in the Workplace: A Management Perspective," Employee Relations Law Journal 58 (June 1986):383.

\*Handicap discrimination claims from persons "disabled" by tobacco smoke;

\*Handicap claims from persons "addicted" to cigarettes;

\*Workers' compensation claims from persons who say they have been injured by tobacco smoke; and

\*Claims that an employer has failed to abide by the common law requirement to provide a safe work environment.<sup>12</sup>

In addition, attorneys point to a number of potential or actual legal claims tied indirectly to smoking issues. These claims include lawsuits over wrongful dismissals tied to smoking disputes, labor law violations by employers that impose restrictive smoking policies unilaterally despite the existence of a union contract, and violations of the duty of fair representation by unions.<sup>13</sup>

One of the most fundamental legal questions attendant to workplace smoking is whether individuals have a constitutional right to a smoke-free environment. In a series of judicial opinions, the courts have held that there is no such right. Some attorneys also expressed some doubt as to whether an assertion of a constitutional right to smoke at work would receive judicial support. One of the major cases involving smoking in the workplace was based on an attempt to bar smoking in the New Orleans Superdome on constitutional grounds (*Gasper v. Louisiana Stadium and Exposition District*, 418 F. Supp. 716, USDC Ea, 1976).<sup>14</sup>

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<sup>12</sup>Ibid.

<sup>13</sup>Ibid., p. 384.

<sup>14</sup>Law Firm of Covington and Burling, *An Assessment of the Current Legal Climate Concerning in the Workplace*. Prepared for Employees and



In that case, the plaintiffs argued that their First, Fifth, Ninth, and Fourteenth Amendment rights were violated by allowing smoking in the Superdome. The court rejected the arguments and the decision was affirmed by the U.S. Court of Appeals for the Fifth Circuit.<sup>15</sup>

Since then, constitutional claims to a smoke-free workplace have been denied by the U.S. District Court for the District of Columbia in *Federal Employees for Non-Smokers' Rights (FENSUR) v. United States* (446 F. Supp. 181, USDC, 1978; aff'd. 598 F. 2d 310, CADC, 1978), and the U.S. Court of Appeals for the Tenth Circuit in *Kensell v. State of Oklahoma* (716 F 2d 1350, 1351, 1983). However, constitutional questions might come into play in the aftermath of smoking disputes.<sup>16</sup>

Another legal avenue used by antismoking activists to restrict smoking in the workplace has been the federal Rehabilitation Act of 1973, in dealing with handicap discrimination claims.<sup>17</sup> Several cases have been brought by individuals who say that, due to a hypersensitivity to smoke, they are "handicapped" by their inability to work around smokers.

An examination of the handicapped-by-smoke issue appeared in an article in the Winter 85/86 issue of Employee Relations Law Journal. The article was written by R. Lawrence Ashe and Dennis H. Vaughn, of

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Interested Citizens (Washington, D.C.: Covington and Burling, 1986), p. 2.

<sup>15</sup> Ibid., p. 2.

<sup>16</sup> Ibid., pp. 3-4.

<sup>17</sup> R. Lawrence Ashe and Dennis H. Vaughn, "Smoking in the Workplace: A Management Perspective," p. 402.

Paul, Hastings, Janofsky, and Walker, at the request of The Tobacco Institute. These authors stated that:

Federal and state statutes prohibiting discrimination against handicapped employees do not appear to support judicial imposition of a requirement that private employers generally provide a smoke-free work environment. Nonetheless, these states may offer some support to individuals who are 'handicapped' by their sensitivity to tobacco smoke.<sup>18</sup>

Legal observers on both sides of the workplace-smoking controversy agree that persons who can demonstrate bona fide illness due to tobacco smoke probably have a handicap case - if the employer is covered by a handicap discrimination statute.<sup>19</sup>

Yet another claim and perhaps most interesting is the disability and workers' compensation claims. Non-smokers have been able to win disability pay in cases where they have demonstrated work-impairing reactions to tobacco smoke. One such case was *Parodi v. Merit Systems Protection Board* (690 F 2d 731, CA 9, 1982). A female employee developed a variety of health ailments after being transferred to an office with many smokers. Away from the office, the medical problems subsided. The court ruled that the employee was entitled to full disability pay, until or unless the employer could find a comparable job in which the employee was not exposed to tobacco smoke.<sup>20</sup>

While workers' compensation cases involving non-smokers' claims are relatively a recent phenomenon, the list of cases involving smokers'

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<sup>18</sup>Ibid.

<sup>19</sup>Law Firm of Covington and Burling, An Assessment of the Current Legal Climate Concerning in the Workplace, p. 2.

<sup>20</sup>Bureau of National Affairs, Where There's Smoke, p. 35.

claims of industrial injury is lengthy and goes back more than fifty years. One of the most controversial types of such cases concerns situations in which employees who smoke have contracted a disease such as lung cancer, after working with cancer-causing agents like asbestos. Is the employer responsible, or the employee?

According to Larson's Workmen's Compensation Law, a compendium of decisions on workers' compensation claims, rulings on whether the illness was caused by occupational exposure or personal smoking have gone both ways, depending on the facts presented and application of individual state laws.<sup>21</sup>

Another type of workers' compensation case involves whether smoking contributed directly to an injury or an accident. Larson cites many such cases, ranging from a fire caused by smoking where smoking was forbidden and a fall while reaching for a dropped pipe, to an injury sustained on a business trip while detouring to buy cigarettes. Perhaps the oddest such case listed in Larson's concerns a Santa Claus beard that was ignited by smoking.<sup>22</sup>

While still addressing the disability claims and workers' compensation, one must direct attention to the unemployment pay and unjust dismissal. Unemployment pay has been awarded to non-smokers in a number of cases. To date, according to attorneys on both sides of the issue, successful claims have come from employees who demonstrate significant physical reactions to tobacco smoke. One such case is

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<sup>21</sup>Ibid.

<sup>22</sup>Ibid., p. 36.

Alexander v. Unemployment Insurance Appeals Board (104 Cal. App. 3d 97; 167 Cal. Rptr 411, 1980), in which the court held that a smoke-sensitive nurse who left her job was eligible for unemployment compensation while she looked for a job in a smoke-free workplace.<sup>23</sup>

In the case of an employee fired for violating a clearly stated no-smoking rule, unemployment compensation probably would not be available. Such a dismissal might face other legal difficulties - either on discrimination grounds or on the basis of wrongful dismissal in states where the employment-at-will doctrine has been eroded.

It is the legislative arena where attorneys on both sides of the smoking issue expect much of the action to be. In 1975, Minnesota passed the first modern-era state statute regulating smoking in the workplace. Ten years later, eight more states had enacted workplace smoking laws affecting the private sector, and two states--California and Hawaii--had enacted laws regulating smoking in public sector workplaces.<sup>24</sup> Within the same ten-year period, scores of localities passed their own regulations restricting smoking, many of them including elements affecting the workplace.

The laws vary widely. Some states merely require private employers to adopt smoking policies, without specifying the kind of policy or the factors that should be considered in developing one. Meanwhile, several localities led by San Francisco report that if a

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<sup>23</sup> Larson, cited in Lewis C. Soloman, "The Other Side of the Smoking Worker Controversy," Personnel Administration (March 1983):1-3.

<sup>24</sup> Lawrence Tribe, "Federalism with Smoke and Mirrors," The Nation, July 1986, p. 788.

mutually acceptable compromise between smokers and non-smokers cannot be negotiated, smoking will be banned in a protesting non-smoker's work area.<sup>25</sup>

So far, no jurisdiction has banned smoking in the workplace, but if such a ban were to ever be enacted, there is a good chance it would be in a California locality. This is due to the fact that as of April 1, 1986, at least seventy-three California cities and counties had passed laws regulating smoking in private workplaces.<sup>26</sup> According to the estimates of the Americans for Non-smokers' Rights (ANSR), 46 percent of the state's population--almost twelve million people--live in areas where employers must give preference to non-smokers in smoking disputes and allow non-smokers to designate their work areas as non-smoking zones.<sup>27</sup> In addition, employers are also prohibited from discriminating against persons who assert their rights under the smoking laws.

Cities and counties in other states, for example, Nassau County, New York; Cincinnati, Ohio (Procter and Gamble); and Ft. Collins, Colorado (Hewlett-Packard), have implemented workplace smoking laws. Currently, California has by far the greatest number of workplace smoking control laws. ANSR estimates that there are more than 400 non-

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<sup>25</sup>Ibid., p. 789.

<sup>26</sup>Ibid.

<sup>27</sup>Raymond F. Scannell, "Workplace Smoking Debate Obscures Key Issues," Bureau of National Affairs Special Report (Washington, D.C.: Bureau of National Affairs, 1986), p. 90.

smokers' rights laws of all kinds.<sup>28</sup>

Many advocates and critics of workplace smoking control consider the legislative arena a major battleground with the state legislatures as well as the Congress second only in importance to the laboratories where the health hazards of secondhand smoke are being studied. In directing attention to state legislation, Florida, Maine, Montana, Nebraska, New Jersey, and Utah require smoking to be limited to designated smoking areas when the workplace is frequented by members of the general public. When the public is excluded, Florida, Maine, and New Jersey still require employers to limit smoking to designated areas.<sup>29</sup>

Montana requires that all employers post signs designating work areas as smoking or non-smoking zones. Utah and Nebraska call for smoking regulations to apply to private, non-public work settings if it is determined by public authorities that smoke constitutes an annoyance or hazard to non-smokers.<sup>30</sup>

The Alaska legislation which would restrict smoking in federal workplaces has been introduced in both houses of the U.S. Congress. In the Senate, the Non-Smokers' Rights Act (S. 1937), introduced by Senator Ted Stevens, has won approval by the Governmental Affairs Committee, and is awaiting action by the full Senate. In the House, Representative Don Ritter of Pennsylvania, introduced H.R. 4546, companion legislation to S. 1937, on April 9, which has been referred to the Energy and Commerce

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<sup>28</sup>Ibid., p. 91.

<sup>29</sup>Bureau of National Affairs, Where There's Smoke, p. 39.

<sup>30</sup>Sullivan, "The Smoking Controversy," p. 25.

Committee.<sup>31</sup> Both bills would require smoking to be limited to designated areas within government buildings. It is estimated that 2.8 million federal employees would be covered. The proposed legislation has drawn fire from federal employee unions which maintain that the legislation would eliminate unions from a key decision about working rules and conditions. Although the legislation calls for unions to be consulted on the designation of smoking areas yet it leaves the final decision up to federal authorities.

#### Union Reactions

Smoking in the workplace is said to be a sensitive and troublesome issue for some American labor unions. A basic problem for unions is this: On one hand, they have a duty to represent individual workers' rights. On the other hand, unions operate by the process of majority rule. A majority of members may want smoking banned in a workplace, while others may demand the right to smoke, or vice versa.

National union leaders, in part because of this potential conflict among members, have opposed outright bans on smoking in the workplace.<sup>32</sup> In early 1986, the AFL-CIO Executive Council declared its opposition to both employer-mandated and legislated smoking restrictions, calling for smoking disputes to be "worked out voluntarily in individual workplaces between labor and management in a

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<sup>31</sup>Ibid.

<sup>32</sup>Dexter Hutchins, "The Drive to Kick Smoking at Work," Fortune, September 1986, p. 42.

manner that protects the interest and rights of all workers."<sup>33</sup> The only antismoking efforts endorsed by the council were voluntary programs which offer smoking cessation aid to workers who want to quit.

Unions, in general, view smoking restrictions as a matter for collective bargaining, but have rarely initiated workplace-wide smoking restrictions, according to smoking control advocates and union officials themselves. Instead, the unions that have grappled with the issue are commonly responding to employer initiatives, or attempting to reach accommodations with individual workers who claim medical difficulties due to smoke. Many unions have avoided moving against workplace smoking on several grounds. Some of the reasons given by union officials include:

- \*Concern about alienating a block of members if sides are taken on the smoking issue;

- \*Fear that focusing on the hazards of smoking will undermine union attacks on traditional occupational hazards;

- \*Unwillingness to dictate standards of personal behavior for members; and

- \*Concern that smoking restrictions will endanger the tobacco industry. Unions represent more than 20,000 tobacco workers.<sup>34</sup>

While acknowledging these concerns, a number of union officials expressed their support for workplace smoking restrictions, particularly in situations where the policy satisfies the preferences of both smokers and non-smokers.

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<sup>33</sup>Ibid.

<sup>34</sup>Bureau of National Affairs, Where There's Smoke, p. 25.



## V. METHODOLOGY

The methodological approach utilized in conducting this study is descriptive analysis. According to Babbie, descriptive analysis is important because it allows the writer to analyze in detail the problems or phenomenon being studied.<sup>35</sup> In addition, it assisted the writer in accurately presenting the arguments advanced by both proponents and opponents of workplace smoking restrictions.

Since most of the controversy surrounding workplace smoking restrictions is focused on the health implications, the writer conducted a telephone interview with Sharon Ransome, Project Coordinator for The Tobacco Institute. Ms. Ransome was selected because she was the coordinator of the Special Report issued by The Tobacco Institute, in collaboration with the Bureau of National Affairs. In addition, the writer also talked to Doris Green, Project Coordinator of the American Lung Association, and Stanley Scott, Vice President of public relations for Phillip Morris to obtain their respective viewpoints on the issue of workplace smoking as well as obtain information regarding relevant literature on the topic. Secondary data were obtained from government documents, special reports, books and journals.

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<sup>35</sup> Earl Babbie, The Practice of Social Research (Belmont, CA: Wadsworth Publishing, 1983), p. 98.

## VI. ANALYSIS

This section of the paper deals with an examination of the arguments advanced by proponents and opponents of the workplace smoking restrictions. In essence, the arguments center around these issues: (a) health implications, (b) business costs, (c) employee productivity, and (d) various approaches to smoking restrictions.

Concern among nonsmokers about the possible effects of breathing other people's tobacco smoke began to emerge following a 1971 speech by the then Surgeon General, Jessie Steinfield. Calling for a ban on smoking in public places, Steinfield stated that "evidence is accumulating that the nonsmoker may have untoward effects from the pollution his smoking neighbor forces upon him."<sup>36</sup> These words set off a chain reaction as researchers began measuring smoke and smoke components in public areas and in laboratory settings and estimating amounts to which nonsmokers may be exposed.

### Health Implications

For smoking control advocates, the most compelling reason why smokers should limit smoking in the workplace has nothing to do with smoker's health that spurs them to action.

Nonsmokers' exposure to tobacco smoke is known by many terms, including secondhand smoke, sidestream smoke, environmental tobacco

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<sup>36</sup> Bureau of National Affairs, Where There's Smoke, p. 39.

smoke (ETS), involuntary smoking, and passive smoking. Whatever the name, smoking control advocates insist that there is compelling, if not absolute, evidence that secondhand smoking poses a health hazard in both the short and the long term effects.

Dr. Michael J. Martin, a clinical epidemiologist at the University of California at San Francisco stated that "There is data available to say that it is highly likely that exposure to secondhand smoke substantially increases the risk of heart disease."<sup>37</sup> Speaking on behalf of the American Heart Association, Martin said that studies indicate that the effects are related to the amount of smoke non-smokers are exposed to, and that ETS poses particular risks for persons who already have heart disease.<sup>38</sup>

Among the research findings pointed to as evidence of short- and long-term non-smokers health risks are these: (a) Findings by a variety of scientists that tobacco smoke contains between 3,000 and 4,000 chemicals, more than twenty of which are known to cause cancer and tumors, and that non-smokers in smokey rooms quickly develop elevated levels of carbon monoxide and cotinine, telltale signs of tobacco exposure, (2) An estimate by U.S. Environmental Protection Agency policy analyst James L. Repace and Naval Research Laboratory chemist Alfred indicates that between 500 and 5,000 non-smokers die each year from exposure to tobacco smoke, and (3) A 1967 study conducted by the late Dr.

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<sup>37</sup>Michael J. Martin, cited in Frances E. Cheek, "Facts and Features for Non-smokers and Smokers," American Lung Association, June 1982, p. 7.

<sup>38</sup>Lewis C. Solomon, "Workplace Smoking Policies: Much Hype, Limited Need," Bureau of National Affairs Special Report (Washington, D.C.: Bureau of National Affairs, 1986), p. 91.

Frederic Speer, a Kansas allergy specialist, found that 49 percent of persons without allergies, and 73 percent of persons with allergies suffered eye irritation from tobacco smoke. Headaches were reported by 31 and 50 percent of the subjects, respectively.<sup>39</sup>

In addition, there have been several studies examining long-term health patterns of non-smokers exposed to tobacco smoke. The following studies were noted by Stellman, the American Cancer Society epidemiologist: (a) a study published in the Journal of the National Cancer Institute in 1985, and sponsored by the American Cancer Society, examined four different types of involuntary tobacco smoke exposure. The study found increased overall risks of lung cancer of between 13 and 31 percent among non-smokers exposed to tobacco smoke; among non-smoking wives of men who smoked more than a pack a day, the risk of lung cancer doubled.<sup>40</sup> (2) Two highly publicized 1981 studies in Japan and Greece are cited frequently to support a claim that cigarette smoke in the air increases the risk of lung cancer in non-smokers. The Japanese study conducted in 1981 by the National Cancer Center Research Institute in Tokyo, found an 80 percent increase in lung cancer risk among women married to smokers, and the study in 1983 reported in the British medical journal, Lancet, found that the non-smoking wives of heavy smokers in Greece had three times the risk of developing lung cancer as women married to non-smokers.<sup>41</sup>

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<sup>39</sup>William U. Chandler, "Banishing Tobacco: Nonsmokers Demand Clean Air," The Futurist, June 1986, p. 9.

<sup>40</sup>Cheek, "Facts and Features for Non-smokers and Smokers," p. 16.

<sup>41</sup>Ibid., p. 17.

However, findings from a later American Cancer Society study did not support the claims of the Japanese and the Greek studies. The American study found no significant increased cancer risk among non-smokers married to smokers. One skeptic is Sorell L. Schwartz, a professor of pharmacology at Georgetown University who studied the research literature at the request of The Tobacco Institute. Speaking in 1985 before a Senate panel, Schwartz said that all the epidemiological studies which have found health effects due to involuntary smoking have been flawed. Among their other weaknesses, he said, is the studies' failure to take proper measure of the amount of smoke to which the non-smokers were exposed, and failure to take into full account environmental factors which might play a role in health problems.<sup>42</sup>

Another opponent of the workplace smoking restriction is Dr. Philip Witorsch, a clinical professor of medicine at the George Washington University Medical Center, who told Congress that claims that secondhand smoke poses a health hazard are "scientifically unsupportable." Witorsch asserted that the available evidence "leads to the conclusion that environmental tobacco smoke is an inappropriate target on which to base management approaches for controlling indoor-air-related health disease."<sup>43</sup> Since there are cancer-causing agents in cigarette smoke, it is not unreasonable to expect that inhaling these agents firsthand or secondhand could cause diseases. However, a study conducted in May 1986, by the Congressional Office of Technology

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<sup>42</sup>Sorell L. Schwartz, cited in Sharon Ransome, "Workplace Smoking Restrictions: Some Considerations," Special Report (Washington, D.C.: Bureau of National Affairs, 1986), p. 5.

<sup>43</sup>Phillip Witorsch, cited in Sharon Ransome, "Workplace Smoking Restrictions: Some Considerations," p. 6.

Assessment, indicated that it did not find any evidence to support the assertion that tobacco smoke is a health hazard to healthy, adult non-smokers, although it did find enough evidence to support the contention that environmental tobacco smoke (ETS) is hazardous to asthmatics.

While the OTA study reportedly fails to find conclusive evidence of an ETS health hazard to most adults, one smoking control expert who reviewed the study concluded that "what evidence there is all goes in one direction," - namely, that there are risks from exposure to tobacco smoke.<sup>44</sup> Whatever the medical reality, there is no doubt that non-smokers can be annoyed by tobacco smoke and they may perceive it to be a medical threat. The Tobacco Institute says that smoke is more likely to be perceived as a threat in buildings which are poorly ventilated.

According to Scott Stapf of The Tobacco Institute, tobacco smoke is sometimes blamed for eye, nose, and throat irritations that are caused by other environmental pollutants. Unlike some other irritants such as chemicals emitted by carpeting or copying machines, tobacco smoke can be seen and smelled and thus becomes the scapegoat.

### Business Cost

How much does smoking cost businesses? In the view of smoking control advocates, the answer is hundreds or thousands of dollars per year per smoker, on the average. In its September 1985 report, the Office of Technology Assessment stated that on a nationwide scale

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<sup>44</sup>William J. O'Connor, "In Defense of Smokers," Business and Health, November 1984, p. 22.

combined health care and productivity losses due to smoking are between thirty-eight billion dollars and ninety-five billion dollars per year, with a "middle estimate" of sixty-five billion dollars.<sup>45</sup>

Smoking control advocates claim business costs run at an annual rate of anywhere from four hundred dollars to four thousand, six hundred dollars per smoker.<sup>46</sup> The costs come from a higher health insurance, fire insurance, absenteeism, maintenance costs, and reduced employee morale and productivity.

Professor Marvin Kristein and William Weiss of the Albers School of Business at Seattle University in 1980 prepared detailed estimates on the cost of smokers to businesses. Depending on several variables, Marvin Kristein estimated the total annual cost to businesses at between three hundred and thirty-six dollars and six hundred and one dollars per smoker. Of this amount, seventy-five to one hundred and fifty dollars was ascribed to health care costs, eighty to one hundred and sixty-six to productivity losses (one minute per work hour for "smoking rituals"), and forty to eighty dollars to higher absenteeism. Other costs were due to fires, accidents (worker's compensation costs), premature deaths (life insurance costs), and health difficulties for non-smokers. Today, the business cost of each smoker is probably in excess of one thousand dollars per day,<sup>47</sup> according to Professor Kristein.

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<sup>45</sup>Raymond F. Scannell, "Workplace Smoking Debate Obscures Key Issues," p. 90.

<sup>46</sup>Ibid., p. 91.

<sup>47</sup>Marvin Kristein and William Weiss, cited in Raymond Scannell, "Workplace Smoking Debate Obscures Key Issues," Bureau of National Affairs Special Report (Washington, D.C.: Bureau of National Affairs, 1986), p. 91.

The Tobacco Institute has questioned estimates such as Kristein's and Weiss's. Lewis Solomon, Dean of the Graduate School of Education at UCLA and an advisor to the tobacco industry, attacked Weiss' estimates. He observed that by selecting certain statistical information, one can show that non-smokers are absent from work more than some smokers due to irritations of the throat, lungs, eyes and other respiratory problems. For example, Solomon reported that, according to the 1975 National Health Survey, smokers of less than fifteen cigarettes per day were absent from work an average of 2.6 days, compared with 4.3 days for persons who had never smoked.<sup>48</sup>

Moreover, findings that smokers have twice as many accidents as non-smokers, or that they are sick or absent more often, may have to do with the fact that smoking is more prevalent in groups which have higher rates of accidents, illness, or job absence, according to Solomon.<sup>49</sup>

Smoking control critics also contend that some control measures will raise business costs by forcing smokers to leave their worksite to have a cigarette. Examining the impact of the proposed Non-Smokers' Rights Act on the estimated 357,000 federal workers who smoke, Robert Tollison, of the Center for Public Choice at George Mason University, estimated a lost work time cost of three hundred nine point five million dollars per year - eight hundred sixty-seven

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<sup>48</sup>Solomon, "The Other Side of the Smoking Controversy," p. 16.

<sup>49</sup>Ibid., p. 17.



dollars per smoking employee, assuming two ten-minute smoke breaks a day.<sup>50</sup> One survey indicates that smokers may be more productive than non-smokers. A 1984 self-report survey of bank executives at Farm Credit Services of St. Paul, Minnesota, found that smokers attested to using their time 2.5 percent more efficiently than non-smokers.<sup>51</sup>

Interestingly enough, aside from the funds that businesses spend on smoking, there is also a tremendous cost imposed on the tobacco industry. It was medical data proving that smoking shortens lives that began to crack the industry's armor. The first salvo was a report by the Surgeon General in 1964 that decisively linked smoking with lung cancer. The federal government slapped warning labels on cigarette packages and organizations such as the American Cancer Society campaigned to warn smokers. By the early 1970s, cigarette advertising had disappeared from television and radio.

But the most serious blow came from two reports released during the winter of 1986, one from the National Research Council and the other by U.S. Surgeon General C. Everett Koop. They presented evidence that "environmental tobacco smoke" inhaled by unsuspecting non-smokers can cause lung cancer and other diseases.<sup>52</sup> Although the industry challenges the validity of these studies, they changed the whole complexion of the antismoking movement.

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<sup>50</sup>Peter Zoray, "'No Smoking' Sweeps America," Business Week, July 1987, p. 49.

<sup>51</sup>Ibid., p. 40.

<sup>52</sup>Ibid., p. 41.

The changes in Richmond are a sign of the times in the thirty-five billion-dollar United States tobacco industry which runs the gamut from small dealers such as Carrington to giant producers such as the seventy-one-billion Phillip Morris USA. Although the industry has weathered past years of bad news from the Surgeon General's reports, yet the forces that turned tobacco into a dirty word are accelerating more and more as social, legal, and financial storm clouds gather over the industry.

With little hope of reversing the slide in sales, tobacco companies are responding by cashing in rather than fighting back. Consolidation is sweeping the tobacco belt, thinning the ranks of farmers, dealers, distributors, and manufacturers. For the survivors, cost-cutting, international expansion, and diversification are the new battle cries. The deteriorating tobacco market is also hurting makers of paper, packaging, and materials. Cigarette advertising in newspapers and magazines plummeted two hundred fifty million, or twenty-five percent from 1984 to 1986.<sup>53</sup>

The industry is trying to fight the antismokers with fire of its own. It has stepped up its lobbying on Capitol Hill and widened its reach to defend itself in state and local battles. It sometimes provides legal help for smokers trying to combat restrictions; and it continues to counter a sea of adverse research on tobacco with its own scientific views. The industry argues that evidence to date does not show any indisputable link between tobacco and health problems.

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<sup>53</sup>Dean Foust, "Big Tobacco's Fortunes are Withering in the Heat," Business Week, July 1987, p. 47.

Productivity

The proponents of smoking restrictions maintain that smoking results in additional cost to operate a business, absenteeism, and loss of productivity. However, a June 1984 nationwide survey conducted by Response Analysis Corporation of Princeton, New Jersey, to determine any perceived connection between smoking and employee productivity undermined some of these arguments.

The company interviewed almost 2,000 local union officials and first-level supervisors in business, industry and government. First-level supervisors--instead of senior managers--were interviewed because they directly observe and evaluate employee behavior and are sensitive to factors influencing employee productivity.

The survey found (percentages are for all respondents) that seventy-eight percent of all supervisors asserted that a smoking ban would not enable their organization to accomplish the same work with fewer employees. Sixty-six percent of the respondents maintain that smoking while working either has no significant effect or a positive effect on productivity. Seventy-four percent of all supervisors believe smoking during work breaks has no significant effect on employee performance. Seventeen percent feel smoking during work breaks has a positive effect on productivity; only eight percent see a negative effect. Thirty-six percent of the supervisors reported that their place of business has smoking regulations. Of this group, fewer than three percent indicated that the regulations were adopted because smoking interferes with job performance. Sixty-four percent of all

respondents reported that their place of business does not have smoking regulations. Of these supervisors, sixty-three percent believe a smoking ban would worsen employee morale, while twenty-six percent say a smoking ban would not affect morale.<sup>54</sup>

From an economic viewpoint, firms that reject more productive smokers in favor of less productive nonsmokers will be less profitable than firms that do not discriminate in such a manner. Businesses making economic decisions that affect their employees should base those decisions on meaningful, direct data--not on estimates and unsupported propaganda.

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<sup>54</sup> Alfred Vogel, "Smoking and Output: Smoking does not Affect Productivity," Management World, April 1985, p. 846.

## VII. CONCLUSION

In spite of legislation in relatively few jurisdictions, and litigation seeking a smoke-free workplace, most of the nation's employers retain discretion to adopt an approach to workplace smoking that comports with their particular needs and circumstances. While generalizations are therefore difficult, it appears that most companies continue to prefer a noninterventionist approach, relying on employees to resolve the matter among themselves.

Where necessary, employers generally seek to provide reasonable accommodation to smokers and nonsmokers alike. In some cases, these efforts may involve such measures as relocating employees, improving ventilation, or utilizing partitions to segregate smokers and nonsmokers. Employers appear reluctant to undertake costly structural alteration of the workplace or to assign offices on the basis of smoking preferences.

Employers, in short, face a range of options for addressing smoking in the workplace. Awareness of these options, combined with a willingness to work with employees to accommodate the wishes of both smokers and nonsmokers will permit employers to choose the approach most suited to their particular needs and circumstances.

Over the next few years, one could expect to see new workplace smoking policies implemented in a few companies. This will occur primarily in relatively small companies that can be most influenced by the

personal views of the owner, and where accountability to shareholders is weakest. Other companies will take limited action to meet employee needs and to reduce agitation for policies imposed externally that would hinder efficient operations.

The future of workplace smoking remains a matter of intense debate. Some smoking control advocates foresee widening acceptance of smoke-free workplaces as a norm in business and society at large.

Companies which have addressed the workplace smoking issue have considered the recommendations made by smoking control experts, as well as consultants and three basic approaches have been adopted. The first is to restrict it only in certain areas (elevators, small conference rooms and company vehicles, etc.) and/or to provide no-smoking sections in certain areas (cafeterias, large conference rooms, etc.). The second approach is to restrict smoking to private offices or designated smoking areas unless all workers in a given area agree otherwise. The third approach is to ban smoking entirely.

Many companies will undoubtedly stay with plans that establish separate smoking areas for considerable period of time. These areas provide effective protection for nonsmokers, substantially deal with many of the problems mentioned above, and yet provide some accommodation for those employees simply unable to quit.

However, a small but growing number of companies have concluded that the costs of establishing and maintaining such separate smoking rooms in addition to the decrease in productivity by the employees that must use them, is a costly expenditure that serves as a liability rather than an asset.

It can safely be assumed that within the next three to five years, virtually every worksite in the country will experience pressure from employees to address the issue. Even though there are companies that would rather rely on employees solving their own differences, business leaders are increasingly taking stands that not only restrict areas in which employees may smoke, but even go so far as to ban smoking totally and/or to establish a policy of hiring only nonsmokers.

### Recommendations

As evidenced in the body of the paper, the controversy surrounding smoking restrictions in the workplace is complex, and emotional. Restricting smoking in the workplace raises serious legal issues. However, given the intensity of public concern about smoking and the ever-increasing evidence of the health hazards of cigarettes, the following actions are recommended:

1. At a minimum, employers should be prepared to declare their worksites to be non-smoking, with smoking in designated areas only.

While allowing for great flexibility in implementation, this type of policy sets non-smoking as the organizational norm with smoking as the exception to that norm. Over a period of time, the areas designated as smoking can be reduced or totally eliminated, depending on management's ultimate goal.

2. At a maximum, employers should be prepared to establish a policy of hiring only nonsmokers, a practice that has been held to be legal as long as it is applied equitably to all employees.

Given the present level of scientific knowledge about the health and economic consequences of smoking, no concerned business decisionmaker can afford to allow uncontrolled smoking in his or her place of work. Nevertheless, whatever the future of workplace smoking, there is no question that the issue is being scrutinized closely by many American employers as well as employees.



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